

## Releasing Democracy: Giving Real Power to the People

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### Democracy Released?

The start of the new millennium coincided with a flurry of celebrations to mark the birth of democracy in Australia—the establishment of parliamentary rule by elected representatives of the people. The national celebrations to mark the centennial of federation and the first sitting of the national parliament in 2001 were quickly followed by festivities to mark sesquicentennials of the states which attained self-government in the mid-1850s. When South Australia celebrated its sesquicentennial this year its constitution was hailed by a leading academic commentator as ‘perhaps the most democratic constitution and election system in Australia, possibly the world.’<sup>1</sup>

In the popular imagination, however, the celebration which resonated most deeply with the birth of democracy in this country fell between the national and state celebrations which were relatively staid affairs presided over by official dignitaries and their invited guests. I refer, of course, to the sesquicentennial in 2004 of the uprising of the miners on the Ballarat goldfields—the Eureka Stockade.

The Stockade has long had a place in Australian popular mythology as the birthplace of Australian democracy. The extent to which the Eureka uprising, in fact, did hasten the transfer of power from the ruling elite to the people is still the subject of dispute in the academic literature, but it is not one of the purposes of this paper to intervene in this debate.<sup>2</sup> There is little dispute that Eureka stands as a popular symbol for ‘releasing the spirit of democracy in Australia’. As Sunter and others have pointed out Eureka has become a symbol of protean proportions and diverse groups have found some nourishment in the ‘stockade everlasting’—nationalists, trade unionists, civil libertarians and most recently advocates for Australia becoming a republic at the start of the new millennium.<sup>3</sup>

If Eureka did release the spirit of democracy in Australia, however, there is a paradox between the promise represented by that uprising 150 years ago and the political realities of 21<sup>st</sup> century Australia. The question addressed in this article is this: 150 years after the 'Ballarat Charter' proclaimed the 'inalienable right of every citizen to have a voice in making the laws he is called upon to obey' and all the rights and freedoms claimed by the rebels have been met, why do surveys show that the majority of Australians still think they have little, if any, influence over the government that rules them? Nor do they feel politicians care much what they think. The paradox is compounded by evidence that the desire for people to have a greater say in government has never been stronger.

The answer to the paradox lies, in part at least, in the contested meaning of democracy, and in an astute observation by an eminent British scholar of democracy, John Dunn, who has argued that as much as the modern state might claim to ground its rule ultimately in the will of the people, its central motif is a firm appropriation of the capacity for subsequent political agency from the people. In Dunn's view: 'In no modern state do the people in fact rule, and... there is little reason to see in the history of any modern state over any period of time a reasonably straightforward intention to permit them to do anything of the kind.'<sup>4</sup>

In this article, therefore, will begin by briefly examining what the Eureka insurgents wanted, to what extent their demands have been fulfilled, and whether this achievement has produced a political system in which every citizen thinks that 'he' has attained the 'inalienable right to have a [real] voice in making the laws he is called upon to obey'.<sup>5</sup>

## **The Ballarat Charter and Beyond**

If Australia is 'The Disillusioned Democracy'<sup>6</sup> then it certainly is not the result of the unmet claims of the Eureka dissidents. All the reforms called for in the charter have long been in place, and more besides. The political reforms outlined by the Reform League included full and fair representation; male suffrage; no property qualification of Members for the Legislative Council; payment of MPs; and short duration of Parliament.<sup>7</sup> Today's 'disillusioned democrat' not only has all these democratic boons

but also a lower as well as an upper house of Parliament to which all citizens in good standing are eligible for election; and full female suffrage. In addition, the right to vote has been extended to 18-year olds. This raises the question of whether the intentions the framers of the Ballarat Charter and what in fact has been achieved since are the same thing.

The simplest definition of democracy is rule by the people, but evidence that the people do not think they have much say over their own governance is strong. Since the mid-1980s Australians have been surveyed after each federal election about their political attitudes as part of the Australian Election Study (AES) and at more irregular intervals in National Social Science Survey (NSSS).

Recent surveys of Australians' attitudes about their political efficacy paint the following picture. In the 2001 AES, less than one in four Australians replied positively to the proposition that 'political parties in Australia care what people think'—a similar proportion as gave a positive response to the same question in the 1998 AES.<sup>8</sup> More than two thirds had not much or no confidence in political parties and about half expressed similar sentiments about the Federal Parliament.<sup>9</sup> In the NSSS held in the mid-1990s more than half the respondents agreed that 'people like me have no influence on government'; about one in five only gave a positive response to the proposition that 'the average person has considerable influence on politics'; while less than a third thought that 'the people we elect as MPs try to keep the promises they have made during an election.'<sup>10</sup> Only about one in six Australians think that government is mostly run for the benefit of all rather than by a few big interests.<sup>11</sup> Surveys also show that many Australians think the government is not listening to them and that they do not trust their elected representatives. Only about one in six Australians give politicians a high rating for ethics and honesty.<sup>12</sup>

### **Disillusioned Democrats**

The survey data outlined above tells us that 150 years after the 'release of the spirit of democracy' at Eureka we seem to have a nation of disillusioned democrats, many of whom appear to feel they have little more influence on the way they are governed than the unfranchised miners at Ballarat. This is despite the fact that modern-day

Australia is, in many ways, more democratic than the ancient Greek nation-state of Athens which is often held up as the democratic ideal. In the Athenian democracy citizenship was restricted to Athenian-born adult males; women could not vote, nor could metics (the ancient Greek equivalent of the ‘guest workers’ of modern states) or slaves. Of those eligible to speak and vote in the Athenian Assembly, a minority only were able to attend or choose to do so. Citizens who lived outside Athens were effectively disenfranchised from participating because they lived too far from the assembly to participate.<sup>13</sup>

In one important respect, however, Athenian democracy differed markedly from the dominant form of government which is characterised as democracy in modern advanced industrial societies such as Australia in that it was largely direct. Citizens were not represented but cast their votes on their own behalf. Laws were made and government decisions taken by assemblies which every citizen had the right to attend, have his say and record a vote. This is not to say that an educated elite did not have influence well beyond that justified by their numbers alone. Their influence, however, was under continual scrutiny by the demos. An American scholar of ancient Greece, Josiah Ober, tells us that the elite orators who tended to dominate the proceedings of the Assembly were required to maintain to the ‘dramatic fiction’ that they too were common men and to express their solidarity with egalitarian ideals:

This drama served as a mechanism of social control over the political ambitions of the elite... Thus the Athenians reaped the benefit of having educated men serve in advisory roles of state. At the same time the Athenians kept their well-educated advisers on a tight leash and restrained the tendency of the educated elite to evolve into a ruling oligarchy.<sup>14</sup>

In modern democracies, however, the people’s right to participate in government is largely restricted to the right to vote for representatives who, in theory, will represent their interests when laws are made and policy decisions taken. Though representative democracy has become virtually synonymous with democracy for nation-states since the 20<sup>th</sup> century, it has a ‘dark side’ as Dunn hints at above, and as the equally eminent commentator Robert Dahl spells out in his book *On Democracy*. Representative democracy’s ‘dark side’, in Dahl’s view, is a consequence of citizens delegating enormous discretionary authority over decisions of extraordinary importance not only to elected representatives, but to bureaucrats, judges, and in recent years, supra-national organisations. ‘Attached to the institutions of polyarchal

democracy that help citizens to exercise influence over the conduct and decisions of their government is a nondemocratic process, *bargaining among political and bureaucratic elites*.<sup>15</sup>

The power of the modern citizen to call the ruling elites to account at elections every few years for their management of the affairs of the state, is obviously a weak substitute for the power the Athenian demos reserved to themselves to have the final say over all important decisions affecting the government of the polity of which they were citizens.

Ober has argued that in the Athenian state the demos harboured an innate distrust of the elite which existed side by side with recognition of the valuable contribution men with elite ability and education could make to the state. This dichotomy resulted in two political ideologies co-existing in an uneasy tension. Egalitarian ideology stressed the native intelligence of the average Athenian, the wisdom of group decisions and the potential evil of elite control. Elite ideology, on the other hand, emphasised the fact that some men did possess extraordinary skills useful to the state and deserved a privileged position in the political organisation of the state.<sup>16</sup>

This tension has resurfaced with the reincarnation of democracy in modern times in its representative form, but the fault line is much deeper because the balance of power has been tilted very much toward the elite. Because of their complexity and size modern democracies need a representative system to make democracy workable. This is a view which goes almost unquestioned in mainstream political thought. The problem lies in claims that such a system reflects true majority rule. French political scientists Meny and Surel summarise this dilemma which lies at the heart of representative democracy thus:

The absolute power of the people had to compromise with the need to devolve authority to an elite selected through competition within the boundaries of a polity...[W]e have to live with this contradiction because neither social scientists nor politicians have been able to provide a more appealing or workable alternative. The present model can be adjusted and improved but it remains deeply marked by its original flaw—the constitutive tension between its ideology (the power of the people) and its functioning (the power of the elites chosen by the people).<sup>17</sup>

The reasons these tensions between the elite and the demos have been intensifying in the latter part of the 20<sup>th</sup> century, and are continuing to do so, are still a matter of debate among political scientists and are too complex to canvass within the limitations of this paper.<sup>18</sup> That these tensions have been intensifying is demonstrated by the fact that ‘elite’ has become a dirty word in modern politics—a word which politicians seek to apply to their opponents and never to themselves or their political allies. And like any such term which becomes part of the weaponry of political slanging matches, it has assumed the chameleon-like characteristic of meaning whatever the speaker chooses it to mean.

This is not a new phenomenon. In the left’s struggle for power in the early-20<sup>th</sup> century the ‘elite’ was identified in political debate as politicians and bureaucrats who were ‘born to rule’ and who viewed power as their hereditary right. In the later part of the century, however, the tables were turned when the American right redefined the ‘elite’ as progressive small ‘L’ liberals, particularly civil rights activists and feminists seeking social change, who were depicted as seeking benefit for minority groups at the expense of the mainstream.<sup>19</sup> In the current Australian debate it is a term that has been successfully appropriated by the Howard government through its attack on ‘political correctness’ and applied with devastating effect to progressive, educated small ‘L’ liberals (in the American sense), who generally lean to the left on social issues and tend to vote for Labor or the Greens.<sup>20</sup>

This attack on ‘elites’ by the Howard government is not without irony considering its leader is the second-longest serving Australian Prime Minister after Sir Robert Menzies. This, by any reasonable measure, would seem to place him firmly among the political elite. Nevertheless, just as elite members of the Athenian Assembly strove to maintain the fiction that they were men of the people, in Australia we have a Prime Minister identifying himself with the struggle of ‘mainstream’ Australians and ‘the battlers’ against what his government calls the ‘elite’.

This divisive exploitation of the tension between elites and the demos, however, has the opposite effect of the solution devised by the ancient Athenians which was designed to reduce tensions within society. The Athenians were in no doubt about who constituted the elite and who comprised the demos. In today’s modern

representative democracies the definition of what constitutes an ‘elite’ depends on a speaker’s political persuasion rather than on any agreed meaning of the word and elitist rhetoric is used to exacerbate tensions within society to gain party political advantage.

This is not to say that there was no competition between elites in Athenian society, or that Athenian demagogues were above painting their opponents as elitists and themselves as men of the people in the pursuit of political advantage. The essential difference is that Athens was a direct democracy, while modern democracies such as Australia are representative. In Athens, elites may have squabbled among themselves, but the demos believed that the final decision lay with them. Elites who offended the demos ran the risk not only of losing the right to speak but of being banished or even executed.<sup>21</sup>

In modern representative democracies the final decision, in theory, also lies with the people via the ballot box but, as demonstrated above, more than half the people, and many eminent scholars, do not believe this is the case.

### **Australians Want More Say**

Nevertheless, even if the majority of Australians think they have little or no say in government, what indications are there that they want more? There are three sources of evidence we can turn to for answer to this question: support for a directly-elected president in the national debate and referendum on whether Australia should become a republic; large-scale quantitative national surveys; and support for citizen-initiated referendums which allow citizens to determine policy directions on particular issues and to make and repeal laws by a direct vote of the people.

Jonathan Kelley and his associates have argued that had the republican model put to the people in 1999 included a directly elected president instead of one chosen by the Parliament Australia would be a republic. In their view: ‘[T]he public's preference for an elected president, for a 'People's choice' republic... is the principal reason the referendum failed.’<sup>22</sup> Their conclusion is strongly supported by a national poll held some time after the referendum. The Newspoll taken in November 2002 showed that

it was not only Australian republicans who wanted a president directly elected by the people; so did an overwhelming proportion of monarchists if they could not keep the Queen. In the poll, 46 percent of respondents favoured a republic with a directly elected president, 15 percent a republic with a president appointed by Parliament, while 40 percent favoured keeping the Queen and the Governor-General and not changing anything. When the choice was reduced to two, however—a directly elected president or one appointed by Parliament—79 per cent of respondents favoured a directly elected president.<sup>23</sup>

National polls and surveys have also questioned people directly about the importance they attached to having more say in government. In a survey conducted by Roy Morgan Research in Australia for the World Values Survey in 1995-6 a plurality (40 per cent) of respondents nominated ‘Giving people more say in important government decisions’ as the most important of role of government. Of the 24 countries surveyed in the study, only the Finns were more emphatic than Australians about the need for more public participation in decision-making.<sup>24</sup> In the 1994 National Science Survey, respondents were asked to choose from a list of options and rank them in order of priority. They ranked ‘more say for the people’ as Australia’s second highest priority just behind ‘maintain order in the nation’. The former attracted 28 percent first preference support, the latter 31 per cent, while the other two options—‘fight prices’ and ‘freedom of speech’ were given top priority by 14 and 12 percent of the respondents respectively.<sup>25</sup> In the 1999 AES on the referendum on the republic the question was asked in different form: respondents were asked to list the top aims for Australia in the next 10 years. Again, ‘giving people more say in important say in government decisions’ ranked, behind ‘maintaining order in the nation’, but this time the gap was greater—30 per cent saying the former should be the top aim for the nation, and 39 per cent the latter.<sup>26</sup> This is not surprising in view of unease about the nation’s border protection generated in the 1998 general election. The gap widened slightly in the 2001 AES following 9/11 and the Bali bombings—with 38 per cent favouring making ‘maintaining order’ and ‘26 per cent ‘giving people more say’—as the nation’s top priority.<sup>27</sup>

There is also some evidence from qualitative surveys that wanting more say in government is high on the agenda for rural Australians. A 2002 report by an



independent think tank, the Eureka Foundation, concluded after a series of forums in regional Victoria that the major cry from the bush was not for more money but for more participation in the process of government.<sup>28</sup>

The use of referendums—a traditional way of giving people a direct say in decision-making in representative democracies—also appears to have majority support among Australians. In the 2001 AES, two thirds of the respondents said referendums were a 'good thing' while less than three percent thought they were a 'bad thing'; the rest thought they made no difference.<sup>29</sup> Of course Australians' experience with referendums is largely concerned with a national referendums on proposals for constitutional change and state referendums, particularly on social issues. These are much different propositions from citizen-initiated referenda (CIR). Parliaments decide the questions to be put, and when they will be put, rather than the people through legally binding petitions.

Because Australia does not have CIR, Australians have not been surveyed on their attitude to this specific form of referendum on any regular basis, if at all. In polities in which it is widely used—states of the USA and in Switzerland, surveys regularly show this direct democracy device has the overwhelming support of the people<sup>30</sup> and it seems likely that CIR would attract a similar level of support in this country. The 2003 South Australian Constitutional Convention to discuss parliamentary reform deliberated on the introduction of CIR, and overwhelmingly supported this form of direct democracy. The convention largely followed the format of a Deliberate Poll and the delegates were polled both before and after the convention. Their support for CIR remained virtually unchanged—65 per cent before and 64 per cent after. As the 323 delegates were randomly selected to represent as closely as possible a microcosm of the South Australian population the 'before' vote could be equated with a conventional opinion poll measuring support for CIR among the population as a whole.<sup>31</sup>

A Queensland independent, Peter Wellington, also raised the issue of CIR in negotiations with Labor Leader, Peter Beattie, which led to the formation of a minority Queensland Labor Government in 1998. Although Wellington's private member's bill to establish CIR in Queensland was ultimately voted down by the major parties, it was supported by another Queensland independent and nine One Nation

Party members.<sup>32</sup> There have also been several unsuccessful attempts to implement CIR in the ACT, the most recent being the 1998 *Community Referendum Bill* which provided for a watered-down version of the device.

Leading constitutional expert George Williams, while opposed to CIR, concedes ‘that the number of CIR proposals in Australia, particularly over the last decade, demonstrates an unrealised desire for increased popular participation in the political process.’<sup>33</sup> Political scientist John Warhurst also believes that demands for CIR and a bill of rights demonstrate that more and more people are dissatisfied with the limitations of the present system.<sup>34</sup>

### **Giving the People More Say**

The survey data briefly outlined above seems to indicate that support for democracy is alive and well in Australia 150 years after Eureka, but is again feeling under some constraint. At the start of the new millennium there is pressure to re-release the spirit of democracy. This pressure has not gone unnoticed not only by the promoters of more direct forms of democracy but also by astute political actors working within the conventional representative form of democracy. The elite response, favoured by the major political parties, is to encourage public consultation under conditions in which they can retain ultimate control while the populist response, favoured some minor parties and independents is to give power to the people to decide on public policy through CIR.

There are problems, however, with both these approaches and the outcomes, long-term, may not deliver the benefits the promoters claim in making people feel more involved in political decision-making. CIR would allow politically active citizens or groups to place issues on the political agenda and the people to have a direct vote on them. Nevertheless, a telling argument against using the device in representative democracies is that ordinary citizens do not have sufficient information to make informed choices on complex issues. Such issues are often the subject of CIR and there is no evidence that the majority are prepared to remedy their lack of knowledge by sufficiently informing themselves during the referendum campaign. An equally compelling argument against the device is that even if they were willing to do so,

powerful factional interests would still be able to manipulate public opinion to their advantage because of superior access to resources, informational and monetary, available to them for the referendum campaign.<sup>35</sup>

The elite response to a perceived democratic deficit—expanding opportunities for public consultation—is also open to elite manipulation.<sup>36</sup> In Australia, both the federal and state governments have placed increased importance on regular regional cabinet meetings to receive feedback from community leaders, local government officials, business executives and citizens. Some governments have also experimented with citizens' juries, people's panels, and other kinds of consultations. All these experiments in 'participatory democracy' have one thing in common however: the government continues to control the agenda and retains full decision-making power to itself.

These initiatives are vulnerable to charges of elite manipulation, whether conscious or unconscious, which create legitimacy problems. Fears about manipulation might be dissipated if these processes occasionally resulted in policy outcomes that were radically different from what the government was perceived to have wanted in the first place. But does this ever happen? Recommendations that are compatible with the government's agenda have a good chance making it into legislation while those that do not are likely to be shelved.<sup>37</sup>

It is not only academic critics or political opponents who see the dangers. One of the concerns of participants in citizen's juries is that the exercise might be designed to examine their underlying motives and reasons for their views for the purpose of political advantage and manipulation rather than as a genuine attempt to sample informed public opinion in order to produce policy that truly reflects the interests of the majority of citizens.<sup>38</sup> If people generally come to see the consultation process as 'tokenistic', 'shallow' and 'cosmetic' then these initiatives are ultimately likely to increase public alienation from government rather than reduce it.<sup>39</sup>

## **The Deliberative Poll**

One method of public consultation which certainly must escape the charge of being

‘shallow’ is a recent innovation, the Deliberative Poll (DP). American political scientist James Fishkin devised the Deliberative Poll as an instrument to sample informed public opinion. This is how he describes the concept in his book, *The Voice of the People*:

The idea is simple. Take a random sample of the electorate [300 to 500] and transport those people from all over the country to a single place. Immerse the sample in issues, with carefully balanced briefing materials, with intensive discussion in small groups, with the chance to ask competing experts and politicians. At the end of several days of working through the issues face-to-face, poll the participants in detail. The resulting survey offers a representation of the considered judgments of the public—the views of the country would come to if it had the same experience of behaving more like ideal citizens immersed in the issues for an extended period.<sup>40</sup>

More than 50 DPs have been held worldwide, including four in Australia—*Australia Deliberates* on the republic referendum in 1999 and *Reconciliation for the 21<sup>st</sup> Century—Where From Here* in 2001 on Aboriginal reconciliation, *The ACT Deliberates: An ACT Bill of Rights* and *Australia Deliberates: Muslims and Non-Muslims in Australia*. The South Australian Constitutional Convention also used the DP format. DPs do seem to offer good prospects of enabling ordinary people to reach decisions on policy issues which, by nature of the process, should approximate the view of the population as a whole if everyone was well-informed and had deliberated at length on the issue. The concept has withstood considerable academic scrutiny and criticism and survived reasonably well.<sup>41</sup> There appears, however, to be one fatal flaw in Fishkin’s project to make the DP a real force for better government; they can have no real impact on policy making if neither the ultimate decision makers nor the public take much notice of their recommendations and this seems, so far, to be the case with DPs.<sup>42</sup>

## **The People's Senate**

My proposal to meet the desire for greater public participation in decision-making and at the same time overcome most of the objections against CIR is to establish a new institution which I have termed the People's Senate. This institution would operate in a similar manner to DPs where 300 to 500 citizens, randomly but scientifically selected, deliberate on issues referred to them by citizen petition. After hearing the evidence for and against they would then vote on proposals on behalf of the entire

citizenry. One important difference would be that the decisions of a People's Senate like many CIR would be binding on the government.<sup>43</sup>

A People's Senate, however, has a much greater potential than merely serving as a deliberative alternative to CIR. Such an institution could also replace the Federal Senate and State Legislative Councils. A People's Senate would allow *informed* public opinion to be consulted on contentious legislation on which the major parties cannot agree. The emphasis would be on contentious and divisive legislation. Legislation which attracted broad support in the lower house (say two thirds majority support) would pass automatically without being referred to a People's Senate.

This would constitute the majority of bills considered by Australian parliaments at the present time. Under the current parliamentary system, both at the Commonwealth and State levels, the vast majority of bills which receive the support of both major parties in the lower house (90 per cent or more) would pass into law by achieving the necessary majority in the lower house.<sup>44</sup> There is already a mechanism in place in the House of Representatives, a Committee of the whole, to deal with non-contentious legislation (which constitutes the majority of bills) which has the broad support from both major parties. A similar mechanism could be provided in state upper houses if one does not exist already. Only contentious bills would need to be put to a People's Senate, and even then only those clauses on which the necessary majority in the lower house could not agree would need to be deliberated on. Non-controversial clauses could be taken as read.

In the case of the minority of contentious legislation, however, which does not have bi-partisan support, the government and the opposition would have to argue their case before randomly selected representatives of the people. The process could be interactive. The government, if it sensed any serious misgivings among representatives of the people about its legislation through questions and comments from the floor, could amend it to make it more acceptable before the final vote was taken. The essential proviso is that any interaction of this nature should be carried out in public, and there should be no behind-the-scenes negotiations between the government and the people's representatives. Such a safeguard would avoid any possibility of personal inducements being offered to change votes and decrease

suspicions of corruption. To offer inducements to members of a People's Senate or try to influence them in any way outside of the formal deliberation process would be against the law and carry very heavy penalties.

To give legislation acceptable to the people's representatives every chance of passing, it would be open to the government and the opposition to engage in closed-door negotiations if they wished to try to reach a mutually acceptable position on the legislation to put to the assembly before the vote was taken. If the government proposals were voted down then the situation would be as it is now when the government is unable to get legislation through the Senate. It could be put up in the same or an amended form to another People's Senate.

### **Time Constraints**

As I have mentioned the design of the People's Senate has been modelled on the Deliberative Poll but changes have been made where research into group processes has indicated a better result would be achieved by amending the format. The People's Senate would also need to be more flexible in setting time restrictions for the completion of the task at hand. DPs that rely heavily on the goodwill of participants to give up their time to participate, have settled on a time schedule which allows for minimum disruption to their working lives. This often means that the deliberation phase of the process has to be rushed, particularly if, as is often the case, the DP is charged with deliberating on a number of complex issues.

Experience has shown that all decision-making bodies—including parliaments—must operate under some time restraints if decisions are to be reached in a timely manner. Nevertheless, in the case of institutions responsible for making laws of the land, it would seem to be essential for adequate time to be allowed for full discussion of the issues, while not allowing debate to become endlessly repetitive. The adoption of Standing Orders governing the conduct of a People's Senate, including regulating debate would prevent the latter evil from occurring.

Nonetheless, I do not think that consideration of all proposed legislation referred to a People's Senate could be fitted into a set time period if adequate time for discussion is

to be provided. In some cases two-and-a-half days (the time generally allowed for DPs) may be sufficient, but with more complex legislation considerably more time for learning and deliberation may be needed. For this reason I would propose that no time limit be set for a People's Senate, just as no time limits are set for jury trials. I would not expect except in exceptional cases, however, that any single People's Senate would run much more than a week at the most.

### **Radical Reform?**

A People's Senate, in some ways, would be a less powerful institution than the present upper houses it would replace and its adoption would be a less radical reform than it might first appear. It gives ordinary people more say in government by giving a representative sample, standing in for the population as a whole, the right to veto legislation which, after an intensive process of learning and deliberation, they still think is bad policy. They cannot, however, initiate or amend legislation themselves as the present upper houses can, or bring down a government by denying supply.<sup>45</sup>

The role of a People's Senates in the legislative process would be essentially one of either approving or rejecting legislation after considering expert and partisan arguments for and against. It would have no direct role in the framing or reframing of legislation although, as has been explained, it could influence and change outcomes through members being invited to state their objections to the legislation when they come to cast their vote. To ask 350 or more lay people to frame actual legislation is, in the words of one eminent British constitutional expert, to invite a 'helpless exhibition...of helpless ingenuity and wasted mind'.<sup>46</sup> Walter Bagehot's comments would carry even more weight in the case of a People's Senate. He was critiquing a proposal for the scrutiny of bills by a committee of the whole house, and his words applied to parliamentarians most, if not all, of whom would have had some experience in legislating, not of inexperienced lay persons.

### **Impartiality: The People's Senate Commission**

If the decisions of a People's Senate are to be made authoritative it is essential that its deliberations not be vulnerable to charges of partiality or manipulation. A People's Senate needs not only to be impartial, but to be seen to be impartial. The public (and

interest groups) would need to be convinced that none of the processes related to the assembly deliberations could be manipulated by the government of the day or anyone else. This would necessitate the establishment of a statutory institution, a People's Senate Commission to run the People's Senates, which should have a similar degree of independence as the Australian Electoral Commission has in administering elections. People's Senate Commission staff would be responsible for administrative services to the Commission and an Agenda Committee responsible for the day-to-day running of a People's Senate. The Agenda Committee, which would have a rotating membership and be selected by members of previous People Senate's, would be charged with the general oversight of the running of the People's Senate.<sup>47</sup> The duties of the committee would include, with the assistance of Commission staff, the oversight of the organising a People's Senate including appointing the expert panels, preparing the briefing papers and providing the trained moderators to assist in the small group discussions and organising public meetings and inviting submissions to involve the public. During the course of the People's Senate the committee, guided by procedures to be set down to ensure the highest possible degree of impartiality, would have final responsibility for setting and controlling the agenda. It would determine the order of business in plenary sessions as well as the order of speakers and also oversee the selection of questions from small groups to be put to expert panels in plenary sessions to avoid repetition while ensuring that all significant points of view be given the opportunity to be heard. There may also be a need for a body, similar to the Court of Disputed Returns, to hear complaints about improper procedure.

The governing body of the People's Senate—the People's Senate Commission—should operate at a wide arms length from the government as an independent statutory authority in a similar fashion to the present Australian Electoral Commission<sup>48</sup> but should be guaranteed even greater protection from any form of influence from the executive. This could be done using a form of sortition to select the membership and to replace retiring members. Suitably qualified persons could be invited to register their interest, and all those who met the criteria for the position would be eligible for selection by lot as positions became available. Former members of the Agenda Committee and experienced facilitators are obvious candidates for the position of People's Senate Commissioner, but diversity of experience on the



governing body would also be important. In light of this, careful consideration would have to be given to setting criteria which would allow the selection net to be cast as widely as possible.

### **Wider Public Participation**

The people themselves, in addition to the obvious stakeholders, should have the right to have their views considered by a People's Senate. This could be achieved by adopting the practice of some government and Senate inquiries of calling for public submissions, holding public hearings, and then collating the evidence gathered for presentation to the People's Senate as part of the briefing process. The response to these 'pre-hearings' could also guide the Agenda Committee, with the assistance of People's Senate Commission staff, in their selection of panel members for questioning by the people's representatives. The people's representatives, if they felt their questions were not adequately answered could also ask for additional 'expert' witnesses to be called.

Such pre-hearings providing the public at large, as well as interest groups, the opportunity to participate in hearings should go some way to meeting another objection to replacing upper houses with a People's Senate: The loss of other services to constituents provided by members elected for a set term. The Senate's public airing of controversial public issues and giving ordinary people a chance to have their say at public meetings by making submissions is a valuable one. But the public's capacity to have real influence of public policy would be enhanced rather than diminished under reform I propose. The reports which Senate committees write at the conclusion of the extensive (and costly) hearings they conduct are all too often ignored by the government and left to gather dust in the archives unless their recommendations coincide with government policy. The pre-hearings I propose would go to the People's Senate where they would almost undoubtedly influence the deliberations on the issue.

### **Cost?**

With each People's Senate comprising 350 to 500 delegates the cost obviously would be considerable. Whether the cost would be comparable to that of the present upper

houses is hard to estimate, depending as it would on a number of factors, including the level of payment to people's representatives for their services and the number of People's Senates which would need to be called each year. In trying to arrive at a ballpark estimate of whether the reforms would result in greater or less expense to the taxpayer, it is instructive to consider the cost of supporting the nation's 76 Senators. On 1999 figures the cost to taxpayers of each MP in the Federal Parliament has been estimated at \$A1,500,000 at year making the annual cost for 76 Senators \$A114,000,000. And this does not include the cost of superannuation payouts.<sup>49</sup> The cost of the South Australian Constitutional Convention in 2003, which included a state-wide program of public meetings, was around \$A1,000,000. Obviously, People's Senates may well cost more than the SA Constitutional Convention because they could run longer, and other factors mentioned above as well as other imponderables may also bump up the cost. Nevertheless, \$A114,000,000 would pay for a lot of People's Senates.

### **Reducing Political Apathy**

In considering the cost of People's Senates at least two other factors should be taken into account: their potential for re-engaging people with the political life of their society, producing a more politically aware and educated citizenry, and reducing the level of apathy and antipathy to politics, which if not stemmed could pose a threat to the legitimacy of government in the future. People's Senates would provide an opportunity for large numbers of citizens to take turns to play a direct part in the policy-making process, with each group being brought together to consider one major piece of legislation and then being replaced by another. The object would be to provide the maximum opportunity for as many citizens as possible to serve, limiting factors being cost and the actual logistics of bringing large groups together on a frequent basis.

If everyone had a reasonable expectation of being asked to serve on an assembly at some time during their lives, and of having the opportunity of exerting some genuine impact on policy, this should increase the general interest in the political process. The proceedings of the assemblies, which would be televised live, should also attract real media and community interest because the outcomes of the deliberative process would

carry real authority in the policy and law-making process. They would also provide a considerable impetus to place greater emphasis in the educational system on training in citizenship in the classical sense of the word to prepare citizens to serve on such a body.

This is, necessarily given the space limitations of this article, a very brief introduction to the concept of People's Senates. The reasons why such an institution is desirable, a much more detailed explanation of how it would work, and the benefits it would provide to partially overcome the democratic deficit inherent in representative democracy is the burden of the author's PhD thesis which should be completed by mid-2008.

## **Conclusion**

This article has posed and attempted to answer the following question: Why is it that 150 years after the release of the spirit of democracy in Australia, the majority of Australians do not think they have much say in the way they are governed. The survey data presented points to this indeed being the case, supported by further data indicating that the majority of people are not happy with this situation. This democratic deficit is—at least in part—the result of a flaw inherent in representative democracy which allows ruling elites too much say and ordinary people too little in the governance of advanced industrial polities such as Australia. Lastly, the article has introduced and briefly explained the workings of a new institution—the People's Senate—which will help overcome this democratic deficit.

## Notes

<sup>1</sup> Dean Jaensch, 'Celebrating SA's Pivotal Role in Politics,' *The Advertiser*, 8 November 2006, p. 20.

<sup>2</sup> Leading Eureka historians Weston Bate and John Molony argue the case in historical terms for Eureka being the birthplace of democracy in Australia (Bate, Weston, *Lucky City*. Carlton, Vic.: Melbourne University Press, p.70; Molony, John, *Eureka*. Carlton Sth, Vic: Melbourne University Press, 2001, p.xiii). For a contrary view see Clark, Manning, 'Re-writing Australian History. In *The Oxford Book of Australian Essays*, edited by I. Salusinsky, Melbourne: Oxford University Press, 1997: Serle, Geoffrey, *The Golden Age*, Carlton, Vic: Melbourne University Press, 1963, p.180; McQueen, Humphrey, *The New Britannia*, Ringwood, Vic: Penguin, 1970, p.142; Murray, Robert., *The unromantic truth about the Eureka Stockade*. [www.theage.com.au](http://www.theage.com.au), 26 December, 2003. Historian Geoffrey Blainey believes South Australia has greater claim to the title (Blainey, Geoffrey, 'Historians discuss Eureka legend' *ABC TV Lateline*, 7 May, 2001) while John Hirst would award the palm to New South Wales (Hirst, John, *The Strange Birth of Colonial Democracy*, Sydney: Allen & Unwin 1988.).

<sup>3</sup> Sunter, Anne Beggs, 'Remembering Eureka', *Journal of Australian Studies*, December 2001, pp.49-56.

<sup>4</sup> Dunn, John, 'Democracy: the politics of making, defending and exemplifying community: Europe' in *The History of Political Theory and other essays*, Cambridge: Cambridge University Press, 1992, pp. 180-81.

<sup>5</sup> Eureka on Trail, Ballarat Reform League Charter. Transcribed Text. Available at <http://eureka.imagineering.com.au/documents.htm?id=%202000&subpage=1>.

<sup>6</sup> This was the title of a Ninemsn *Sunday* program cover story about politicians and their lies broadcast in 1998. Veteran Nine network political reporter, Peter Harvey said then: 'One of the things that constantly disturbs me is the depths of cynicism...people are really in a mode that expects to be lied to, that expects to be defrauded and cheated and made promises that won't come to fruition' (Ransley, Paul, 'The Disillusioned Electorate' Ninemsn *Sunday* program [TV program transcript], 27 September 1998. [http://sunday.ninemsn.com.au/sunday/archives/cover\\_transcripts.asp](http://sunday.ninemsn.com.au/sunday/archives/cover_transcripts.asp).) The phenomenon of the disillusioned, disaffected or critical democrat—that is citizens who while retaining a strong attachment to the concept of democracy are nevertheless dissatisfied with the way it operates in their country—is a late 20<sup>th</sup> century trend which researchers have identified in most, if not all, advanced industrial democracies such as Australia (Pharr, Susan J., and Robert D. Putnam, eds, *Disaffected Democracies: What's Troubling the Trilateral Countries?* Princeton, NJ: Princeton University Press, 2000; Norris, Pippa, ed, *Critical Citizens: Global Support for Democratic Government*, Oxford: Oxford University Press 1999; Nye, Joseph S. Jnr, P. D. Zelikow, and D. C. King, eds. *Why People Don't Trust Government*, Cambridge, MA: Harvard University Press 1997.). Nevertheless, it has not yet gained mainstream acceptance in the Australian political science community (Goot, Murray, 'Distrustful, disenchanted and disengaged? Public opinion on politics, politicians and parties: An historical perspective', in *The Prince's New Clothes: Why Do Australians Dislike Their Politicians?*, edited by D. Burchell and A. Leigh. Sydney: UNSW Press 2002; McAllister, Ian., 'A Crisis of Democracy 'Again', *Policy: The Centre for Independent Studies*). The scepticism is based on an analysis of the quantitative data related to trust in government and voter engagement with the political process. However, because of the flaws inherent in such data, and the overwhelming evidence from other sources—qualitative, anecdotal, and cross-national studies—I have argued elsewhere that claims of Australian exceptionalism in regard to this phenomenon cannot stand (Gollop, Leigh, 'Distrustful, Disenchanted, Disengaged Citizens: Are Australians an Exception?' Refereed paper presented to the Australasian Political Studies Association Conference, 29 September - 1 October 2004 at University of Adelaide. Available at [www.arts.anu.edu.au/sssa/apsa/Papers/gollop.pdf](http://www.arts.anu.edu.au/sssa/apsa/Papers/gollop.pdf)).

<sup>7</sup> Eureka on Trail, Ballarat Reform League Charter.

<sup>8</sup> Respondents were asked to consider the following proposition and asked to record their response on a scale of 1 to 5: 'Some people say that political parties in Australia care what ordinary people think. Others say that political parties don't care what ordinary people think.' 1 and 2 responses have been interpreted as favourable.

<sup>9</sup> Bean, Clive et al. 2002, Australian Election Study, 2001, Canberra: Social Science Data Archives, The Australian National University; Australian Election Study, 1998 (Computer file). Social Science Data Archives, Australian National University, Canberra.

<sup>10</sup> International Social Science Survey: Role of Government III, *International Social Science Survey: Role of Government III* [computer file]. The International Social Survey Programme (ISSP) 1996 [cited 30 Jan. 2002]. Available from <http://www.gesis.org/en/information/index.htm>.

<sup>11</sup> Bean et al, Australian Election Study, 2001.

<sup>12</sup> Morgan Poll, 'Health Professionals Continue to be Considered Most Ethical and Honest: Finding No. 3701', Melbourne: Roy Morgan Research 2004.

<sup>13</sup> Blackwell, Christopher W., 'Athenian Democracy: an overview', in *Demos: Classical Athenian Democracy*, edited by C. W. Blackwell: The Stoa. A consortium for electronic publications in the humanities 2003. Available at [\[www.stoa.org\]](http://www.stoa.org). Blackwell estimates the Athenian population (that of the city and the surrounding countryside of Attica) at between 40 to 60 thousand in fifth century BC and between 20 to 30 thousand in the 4<sup>th</sup> century. Assemblies are believed to have consisted of between five and six thousand citizens.

<sup>14</sup> Ober, Josiah, *Mass and elite in democratic Athens: rhetoric, ideology and the power of the people*, Princeton, NJ: Princeton University Press, 1989, pp. 1989-90). This drama, played out the Athenian Assembly, perhaps has its closest parallel in Australian democracies in the post-election speeches of the leaders of political parties accepting victory or conceding defeat in which the winners declare themselves 'humbled by the honour bestowed on them' and promise to 'govern for all of the people' while the losers accept 'the verdict of the people'. The regular appearance of state and federal leaders at major sporting events—regardless of their previous interest in the game—is another example of elites feeling the need to show solidarity with the people. According to research carried out by Paul Corcoran and Sally-Ann Rowlands, these ritualistic post-election speeches are as much of a dramatic fiction as the protestations of elite orators in the Athenian assembly. After analysing the rhetoric of victory and concession speeches in 23 Australian Federal elections from 1940 to 1996 they concluded that despite lip service being paid to the concept of majority rule though the use of phrases such as the people's verdict 'the official voices of Australian electoral discourse often seem to speak as if the people, not the parties are on trial...tend to undermine the classic view democratic view of elections as an evaluation and assessment of political parties by the population (Corcoran, Paul and Sally-Ann Rowland, 'The People on Probation: Rhetorical Images of the Australian Electorate', Paper read at Australian Political Studies 1997: Proceedings of the 1997 Australasian Political Studies Association Conference, Vol 1 1997, pp. 237,246).

<sup>15</sup> Dahl, Robert A. *On Democracy*, New Haven: Yale University Press, 1998, p.133.

<sup>16</sup> Ober, *Mass and elite in democratic Athens*, pp.198-90.

<sup>17</sup> Meny, Yves, and Yves Surel, eds., *Democracies and the Populist Challenge*, New York: St Martins Press, 2002.

<sup>18</sup> The explanation, in part at least, I believe is influenced by two dominant trends. First, the adoption of post-material values, identified by Inglehart, which has been accompanied by a major decline in deference to the authority of government by an increasing proportion of liberal-leaning members of the population. (Ronald Inglehart, *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies*, Princeton, NJ: Princeton University Press, 1997). And, second, the reaction against neo-liberalist policies by some blue-collar and conservative members of society who have lost faith in the commitment of national governments to protect their interests in the restructuring of post-industrial societies brought about by globalisation. Supporting arguments for these hypotheses can be found in my honours dissertation. Leigh Gollop, 'It's an Elephant, Stupid! Diagnosing Disaffection in Liberal Democracies', Honours thesis, University of Adelaide, 2000.

<sup>19</sup> Tiffen, Rodney, 'Elite mediocrity', *The Drawing Board Symposium: Elitist anti-elitism* 2003.

<sup>20</sup> Sawer, Marian, 'The power of us and them' *Australian Financial Review*, 22 October, 2 2004; Tiffen, Elite mediocrity; Manne, Robert, 'Price of his power is a soulless land', *Sydney Morning Herald* ([smh.com.au](http://smh.com.au)), 30 December. 2002

<sup>21</sup> Ober, Josiah, 'Public Speech and the Power of the People in Democratic Athens', in *The Athenian Revolution, Essays on Ancient Greek Democracy and Political Theory*, edited by J. Ober, Princeton: Princeton University Press, 1996.

<sup>22</sup> Kelley, Jonathan, M.D.R. Evans, Malcolm Mearns, and Bruce Headey, 'Public Opinion of Britain, a Directly Elected President, and an Australian Republic', in *Constitutional Politics: The Republic Referendum and the Future*, edited by J. Warhurst and M. Mackerras, St Lucia QLD: University of Queensland Press, 2002, p.129. This view is disputed, however, by Mackerras and Maley. Kelley et al. base their conclusion on an analysis of panel surveys of Canberra residents at the beginning and end of the campaign and, using national data, extrapolating their findings to Australia as a whole. They concede, however, that this micro-simulation involves what some might regard as two heroic assumptions: that the links between party, attitudes to a republic, preferences for how the head of state

is chosen, and the referendum vote in Canberra are similar to those in Australia as a whole; and that the degree to which Canberra voters who wanted elected president turned against the referendum because they were not offered one was also comparable for Australian voters as a whole. Mackerras and Maley, based on an analysis of the AES survey data for the 1998 federal election and the referendum, conclude that even if the concept of Australia becoming a republic received the support of 75 per cent of Australians in a plebiscite, a concrete proposal for a republic with a popularly-elected head of state would inevitably be defeated in a subsequent referendum when republican supporters split into two hostile camps (Mackerras, Malcolm, and M. Maley, 'Referendum Results: Some Reflections', in *Constitutional Politics: The Republic Referendum and the Future*, edited by J. Warhurst and M. Mackerras, St Lucia: University of Queensland Press Australian Studies, 2002, p.111). The Chair of the Australian Republican Movement, and co-editor with Mackerras of a book on the future of the republic), John Warhurst, however, believes if a plebiscite returned 70 per cent majority for a republic, 'it could be confidently predicted that a second republican referendum will pass in four or more states' (Warhurst, John, 'The Republic Campaign in Australia: Past, Present and Future', Refereed paper presented to the Australasian Political Studies Association Conference at University of Tasmania, Hobart, 29 September - 1 October 2003, p.21). Predictions that referendums are bound to fail if the political elites of the major parties take opposing sides in the debate are supported by the results of previous constitutional referendums. Many of these referendums, however, were designed to centralise more power in Canberra. There is some reason to think that the result would not necessarily be the case for a referendum that transferred power back to the people. New Zealanders, for instance, voted overwhelmingly for a new electoral system which they perceived as giving them more choice even though the change from first-past-the-post to a form of proportional representation was opposed both major political parties (Mulgan, R., 'Defeating Defeatism', in *The Australian Republic*, edited by J. Uhr, Sydney: The Federation Press 1999, p.180).

<sup>23</sup> Newspoll/The Australian, 1-3 November 2002: Newspoll Market Research, 2002

<sup>24</sup> Morgan, Roy, 'The Asian crisis means change for Australians—if not—we need a republic to destroy the parliamentary system as we know it—and start again!' *The Melbourne Convention—Federation and the Future*, 3 March, 1998 Available at <http://www.roymorgan.com/papers/1998/1998MR1.html>

<sup>25</sup> Kelley, Jonathan, Clive Bean, M.D.R. and Evans, and Krzysztof Zagorski., International Social Science Survey Australia 1994 [computer file]. Canberra: Australian Social Science Data Archive, The Australian National University 1996. There were an unusually large number of 'don't knows' and missing cases (15 per cent) in this survey.

<sup>26</sup> Gow, David John, Clive Bean, and Ian McAllister, Australian Constitutional Referendum Study, 1999: Social Science Data Archives, The Australian National University, Canberra 2000.

<sup>27</sup> Bean et al., Australian Election Study 2001.

<sup>28</sup> ABC RN Breakfast Radio, Bush Views, 25 July 2002.

<sup>29</sup> Bean et al., Australian Election Study 2001.

<sup>30</sup> Donovan, Todd, 'Expanding Direct Democracy in the US: How Far is Too Far?' Paper read at The Democracy Symposium, at Williamsburg, VA., 16-18 February 2002,

<sup>31</sup> Ryan, Pamela., *Constitutional Convention. South Australian Deliberates: The Future of Our Parliament*. Final Report to Parliament. Adelaide: Issues Deliberation Australia 2003.. This does not necessarily mean that no delegates and changed their minds on this issue. Some supporters may have become opponents after listening to elite argument and deliberating on the matter and vice versa.

<sup>32</sup> Williams, George and Geraldine Chin. 'The Future of Citizens' Initiated Referenda Proposals in Australia: New Directions for Popular Participation', *Australian Journal of Political Science*, vol.35, no.1, 2000.

<sup>33</sup> Williams and Chin. They argue CIR would weaken responsible representative government, and threaten majority domination of minorities.

<sup>34</sup> Warhurst, John, 'Outside the square', *Australian policy online*, 9 September 2002. See also Solomon, David, *Coming of Age: A Charter for a New Australia*, St Lucia, Qld: University of Queensland Press, 1998.

<sup>35</sup> Gollop, Leigh, 'Giving thinking people a say in government. People's Assemblies: an alternative to Citizen-initiated Referendums or 'the task force revolution'. Paper read at APSA 50, the Jubilee Conference of the Australasian Political Science Association at Australian National University, Canberra, 2-4 October, 2002

<sup>36</sup> Fishkin, James S., and Robert C. Luskin, 'The quest for deliberative democracy', in *Democratic Innovation: deliberation, representation and association*, ed. M. Saward, London: Routledge, 2000.

<sup>37</sup> A more in depth analysis of the problems of both CIR and consultative government is provided in Gollop, Giving Thinking People a Say in Government.

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<sup>38</sup> Renn, O., H.U. Stegelmann, G. Albrecht., U. Kotte and H.P. Peters, 'An empirical investigation of citizens' preferences among four energy alternatives', *Technological Forecasting and Social Change*, Vol. 25, 1984, pp.43-5

<sup>39</sup> A recent study exploring people's perceptions of public involvement in the planning process in Scotland, found that both citizens who had been involved in consultations, as well as those who had not, were critical about consultative initiatives on these grounds (Jenkins, Paul , Karryn Dr. Kirk, and Harry Smith, 'Getting Involved in Planning: Perceptions of the Wider Public: Summary: Research Findings No.155/2002,' in *Social Research: Development Department Research Programme*. Edinburgh: Government of Scotland, 2002.

<sup>40</sup> Fishkin, James S., *The Voice of the People: Public Opinion and Democracy*, New Haven and London: Yale University Press, 1995, p. 135

<sup>41</sup> Gollop, 'Giving Thinking People a Say in Government'.

<sup>42</sup> Gollop, 'Giving Thinking People a Say in Government'.

<sup>43</sup> I also propose some design changes based on research into groups processes which I believe would result in the institution functioning more effectively, but I do not have the space to outline these in this article.

<sup>44</sup> Hamer estimates that only 10% of the bills considered by the Senate could be classed as controversial. David Hamer, *Can Responsible Government Survive in Australia?*, Canberra: The Department of the Senate, 2004. See also D. Jaensch, 'Let's Reform the Reformers,' *The Advertiser* 2000.

<sup>45</sup> Concerned citizens would be able to force the Parliament to enact legislation through a Citizen-Initiated People's Senate, but the role of the People's Senate would still be confined to either vetoing or approving of the proposed law.

<sup>46</sup> Bagehot, Walter, *The English Constitution*, Fontana, 1963, p. 36.

<sup>47</sup> I do not have the space in this article to spell out all the details of the design of a People's Senate Agenda Committee but the method of selection of representatives to perform this important function would ideally include an element of randomness to ensure impartiality and diversity as well as merit to gain the services of at least some of the most able representatives as judged by their peers. My solutions will be spelled out in my PhD dissertation.

<sup>48</sup> Australian Electoral Commissions, and their forerunners have established an enviable world-wide reputation for organising and overseeing full and fair elections going back to the introduction of the Australian ballot in the 1850s which was instrumental in greatly reducing electoral corruption. Peter Brent, 'The Australian Ballot: Not the Secret Ballot,' *Australian Journal of Political Science* 41, no. 1 (2006).

<sup>49</sup> Paul Raffaele, 'Politicians' Outrageous Perks,' *The Readers' Digest*, August 1999.